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No. 60868-1-I

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

ROGER L. SKINNER

Appellant

v.

CITY OF MEDINA and CIVIL SERVICE COMM'N
OF THE CITY OF MEDINA

Respondents

REPLY BRIEF OF ROGER SKINNER

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A. SUMMARY OF REPLY

The City of Medina does not argue that it was not served with the Notice of Appeal to the Superior Court. Indeed, it cannot because it was, in fact, served. The City goes to great lengths, however, to distinguish itself from the Medina Civil Service Commission in arguing that service on the City did not constitute service on the Medina Civil Service Commission. If the City is indeed distinct from the Medina Civil Service Commission, then it cannot make a jurisdictional argument on behalf of the Medina Civil Service Commission. On the other hand, if the City of Medina argues that it is the real party in interest, not the Civil Service Commission, then the City's argument fails because it was, in fact, properly served regardless of its claim that the Medina Civil Service Commission was not properly served. In any event, Skinner separately served the City of Medina, the Medina Police Department and the Medina Civil Service Commission. CP 50,51,& 52.

The City also argues that Skinner's service was not timely because, according to the City's argument, the Motion for Reconsideration heard by the Civil Service Commission did not toll the period during which Skinner was to file his appeal. Appellant Skinner filed his Notice of Appeal with King County Superior Court within 30 days after receiving

the Commission's written decision on reconsideration. On the same day, Skinner served the City and the Commission, as described in Skinner's opening brief.

The City and Commission not only promulgated the rule allowing for a motion for reconsideration by the Commission, the Commission also readily accepted Skinner's Motion for Reconsideration, proceeded to consider it, issued a decision on that motion and then delivered that decision to Skinner. The City and the Commission should not be allowed to promulgate rules, publish those rules, operate under those rules, deliver a decision to Skinner under those rules and then argue that Skinner should not have relied on those rules.

Because the Medina Civil Service Commission was in fact served in a proper and timely manner and because it did not appeal the December 1, 2006 decision of King County Superior Court, this case should be remanded to the King County Superior Court for proceedings on the merits.

B. ARGUMENT

1. The Medina Civil Service Commission Has Not Appealed The Superior Court Order Upholding Jurisdiction, Nor Has It Participated In This Appeal Despite Being Served With All Pleadings And Other Communications

As described in Skinner's opening brief, Respondents City of Medina and the Medina Civil Service Commission both first argued to have Skinner's Superior Court appeal dismissed for lack of jurisdiction before King County Superior Court Judge Lum on November 29, 2006. CP75. After hearing the arguments of the City and the Commission, the same arguments now presented to this court by the City, and then taking this matter under advisement, Judge Lum denied the City's and Commission's Motion to Dismiss on December 1, 2006. *Id.* The Medina Civil Service Commission has never appealed that decision or filed or participated in any subsequent motion or appellate proceeding.

After December 1, 2006, the parties began to prepare their cases for a hearing on the merits. The City of Medina and the Medina Civil Service Commission prepared and filed a transcript of proceedings for review. Appellant Skinner prepared his trial/appeal brief with King County Superior Court, relying on the transcript provided. Skinner's trial brief was filed with King County Superior Court on July 17, 2007. CP 102-207.

The City of Medina then filed its summary judgment motion for dismissal, a motion that the Medina Civil Service Commission did not join or respond to in any way, which motion was heard by Superior Court Judge McBroom on November 2, 2007. CP 260-261. At the conclusion of the argument on the City's motion, Judge McBroom entered a decision dismissing the appeal without taking the matter under advisement. CP 63A. However, the Medina Civil Service Commission did not appear or otherwise participate in the November 2, 2007 proceedings nor did it take any action to overturn or appeal the December 1, 2006 decision of Judge Lum, which held that the Court had jurisdiction over the Medina Civil Service Commission.

In fact, The Medina Civil Service Commission has been served with every piece of correspondence and pleading filed in this case, in both the Superior Court and Appellate Court levels, yet the Medina Civil Service Commission has not responded in any way.

2. SKINNER'S APPEAL TO THE SUPERIOR COURT WAS PROPERLY AND TIMELY FILED

The City of Medina and its Civil Service Commission argue that Skinner's appeal to King County Superior Court was not timely because Skinner's Motion for Reconsideration did not toll the period for the filing of his appeal. This argument is contrary to statutory law, applicable case

law, and the efficient administration of justice in the civil courts of this state.

a. The Tolling of the Appeal Period by a Motion for Reconsideration is Supported By Case Law

In *Hall v. Seattle School District*, 66 Wn.App. 308, 831 P.2d 1128 (Div. 1, 1992) this court held that substantial compliance with statutes that prescribe methods of service is sufficient. In *Hall*, the court cited an earlier case:

[T]he basic purpose of the new rules of civil procedure is to eliminate or at least minimize technical miscarriages of justice inherent in archaic procedural concepts once characterized by Vanderbilt as “the sporting theory of justice.”

Hall at 308 citing *Curtis Lumber Co. v. Sortor*, 83 Wn.2d 764 (1974).

The *Hall* court went on to consider whether the time for appeal runs from the date of the initial decision or from the date on the ruling for reconsideration. The court held that the filing of a Petition for Writ of Review filed within 30 days of an order on a motion for reconsideration was timely filed. *Hall* at 317. In its decision the court noted the consistency of this rule with the Federal Rules of Appellate Procedure, RAP 5.2(3), and the Administrative Procedure Act at RCW 34.05.070.

This Court also stated (emphasis added):

Contrary to Hall's contention, there is no firmly established common law that a motion for reconsideration does not toll the time for appeal from the original decision.

Id.

Skinner awaited receipt of the decision on reconsideration before engaging an attorney to commence an appeal on his behalf. Under the law, Roger Skinner was entitled to a period of time during which he could decide whether to appeal. This was not a decision that could be made in haste. Not only did Roger Skinner need to understand the grounds for an appeal after an analysis by his attorney, he also needed the allotted time to determine the costs involved in such an appeal, the likelihood of success, and only then could he make a decision about how to proceed. Once that decision was made, Skinner advised his attorney who then prepared and timely filed Skinner's appeal - within the 30 days provided by law. Like the facts presented to this Court in *Hall*, such actions were consistent with the rule well established by the Federal Rules of Appellate Procedure, the corresponding State rule at RAP 5.2(3) and the Administrative Procedures Act and promoted the efficient and effective administration of justice.

b. The Nitardy Decision Cited By The City Is Inapposite To This Case

The City of Medina asks this court to reject *Hall* and, instead, base its decision in this case on the decision in *Nitardy v. Snohomish County*, 105 Wn.2d 133 (1986), decided some six years prior to *Hall*.

The City argues “Here, the facts are more akin the facts in *Nitardy* than in *Hall*. ” The *Nitardy* case was not at all about Motions for Reconsideration and their effect on the tolling of time limits to file an appeal. Skinner’s first argument based on the *Hall* decision is, as this court stated in that decision:

Contrary to Hall’s contention, there is no firmly established common law that a motion for reconsideration does not toll the time for appeal from the original decision.

Hall at 317.

The *Nitardy* decision, decided some six years prior to *Hall*, is inapposite to this issue as it simply does not consider the effect of reconsideration motions on the time limits for filing an appeal.

To the extent the City’s reliance on *Nitardy* focuses on the person who should be served, that reliance is also misplaced in this case involving a city and its civil service commission. In *Nitardy*, the court considered whether service on a County Executive, a full-time county official, was sufficient where an applicable RCW required service on the

County Auditor, also a full-time county official. The *Nitardy* court found that such service was not sufficient.

The *Hall* case considers a much different scenario. In *Hall*, this court noted:

Hall's notice of appeal was delivered to the secretary of the chair of the school board and delivered by her to the office of the general counsel pursuant to standard operating procedures. The chair of the school board is a part-time unpaid position. Thus, the person serving as chair is not available every day at the school board office for service. Indeed, the chair could easily be unavailable for service for long periods, by reason of being out of state on vacation or by reason of business travel. After an adverse decision, a teacher may need some time to decide whether to appeal, leaving only a few days for service. It is incomprehensible that the Legislature intended that inability to serve a specific individual, particularly one with limited availability, should preclude an appeal.

In this case now before the Court, the City argues that service should have been made on the Chair of the Medina Civil Service Commission. RCW 41.12.030, entitled "Civil service commission -- Appointment -- Terms -- Removal -- Quorum", states in pertinent part:

The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides.

Thus the Medina Civil Service Commission consists of unpaid, citizen members of the community, not full time city employees. The

facts in this case thus parallel the facts in *Hall*. It cannot be the case for Roger Skinner that “that inability to serve a specific individual, particularly one with limited availability, should preclude an appeal.”

This Court, in *Hall*, went on to say “where timely notice is in fact received by the District and there is absolutely no prejudice, we fail to see any reasonable policy basis for not holding substantial compliance sufficient.” In this case, the Medina Civil Service Commission did receive actual and timely notice, as demonstrated by the Commission’s filing of its Joinder to Motion to Dismiss (CP 46-49) on November 15, 2006, less than 30 days after the Notice of Appeal was served and filed and before any other proceedings occurred in the case. Because the Commission received actual notice and suffered absolutely no prejudice, this court should deem Skinner’s service to be sufficient.

C. CONCLUSION

Skinner properly and timely filed his Notice of Appeal and respectfully requests that this court reverse the trial court’s summary judgment decision and remand this case back to King County Superior Court for further proceedings on the merits.

Dated May 5, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'WJ Murphy', written over a horizontal line.

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THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

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ROGER L. SKINNER,

Petitioner,

vs.

CIVIL SERVICE COMMISSION of The City
of Medina, THE CITY OF MEDINA, a
municipal corporation, MEDINA POLICE
DEPARTMENT

Respondents


Appeal Court No: 60868-1-I
Trial Court No.: 06-2-33267-9 SEA

DECLARATION OF SERVICE

The undersigned declares, under penalty of perjury under the laws of the State of Washington,
that he served the attorneys listed below with true and complete copies of Petitioner's:

REPLY BRIEF OF ROGER SKINNER

Signed this 5th day of ^{MAY} ~~January~~ 2008 at Seattle, WA.



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DECLARATION OF SERVICE - 1

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